

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MALINDA DOTSON,

No. C-08-01861 JCS

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

**ORDER GRANTING MOTION TO
DISMISS AS TO DEFENDANT ELENA
FURROW AND REMANDING CLAIMS
AGAINST REMAINING DEFENDANTS
TO SUPERIOR COURT OF HUMBOLDT
COUNTY [Docket No. 7]**

This case was removed from the Superior Court of Humboldt County on the basis that Defendant Elena Furrow is an employee of a federally-funded health center and therefore, the claims asserted against her are governed by the Federal Tort Claims Act ("FTCA"). The United States, substituting for Dr. Furrow, now brings a Motion to Dismiss ("the Motion") pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6). In particular, the United States asserts that: 1) the claim against Furrow should be dismissed under Rule 12(b)(6) because she was acting within the scope of her employment and therefore, she is immune from suit; and 2) the claim should be dismissed under Fed.R.Civ. P. 12(b)(1) for lack of subject matter jurisdiction because Plaintiff has not yet exhausted her administrative remedies under the FTCA. All Defendants, including the United States, have consented to the jurisdiction of a United States Magistrate Judge, pursuant to 28 U.S.C. § 636(c).

Plaintiff has filed a non-Opposition stating that she does not oppose dismissal of the complaint as it relates to Defendant Furrow so long as: 1) dismissal of the claim is without prejudice to refile once it is exhausted; and 2) the claims against the remaining defendants are remanded to Humboldt County Superior Court. In light of Plaintiff's non-opposition, the Motion is GRANTED. The Court dismisses the claim against the United States (substituted for Defendant Furrow) without

1 prejudice on the basis that Plaintiff has not yet satisfied the administrative exhaustion requirement
2 that applies to that claim. Plaintiff may refile the claim when the exhaustion requirement has been
3 met. The claims against the remaining defendants shall be remanded to the Humboldt County
4 Superior Court, where the action was initially filed. The motion hearing scheduled for **June 6, 2008**
5 is **vacated**.

6 IT IS SO ORDERED.

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8 Dated: May 8, 2008


9 JOSEPH C. SPERO
10 United States Magistrate Judge
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